



Billing Code: 6560-50

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

EPA-R08-OAR-2014-0713; FRL-9919-42-Region 8

Approval and Promulgation of Air Quality Implementation Plans; Montana; Revisions to Administrative Rules of Montana - Prevention of Significant Deterioration

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve State Implementation Plan (SIP) revisions submitted by the State of Montana on June 4, 2013. This submission revises the Administrative Rules of Montana that pertain to the issuance of Montana air quality permits. The June 4, 2013 revisions contain amended and renumbered rules that, among other things, address the proper treatment of air pollutants under the State's prevention of significant deterioration (PSD) program. In this rulemaking, we are taking final action on all of the June 4, 2013 submittal, with the exception of one small portion. This action is being taken under section 110 of the Clean Air Act (CAA).

DATES: This final rule is effective [insert date 30 days after publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R08-OAR-2014-0713. All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other

information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129. EPA requests you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Kevin Leone, Air Program, Mailcode 8P-AR, Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129, (303) 312-6227, or leone.kevin@epa.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

II. What are the Changes that EPA is Taking Final Action to Approve?

III. Response to Comments

IV. What Action is EPA Taking Today?

V. Statutory and Executive Orders Review

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials Act or CAA mean or refer to the Clean Air Act, unless the context indicates otherwise.

- (ii) The initials ARM mean or refer to the Administrative Rules of Montana.
- (iii) The words EPA, we, us or our mean or refer to the United States Environmental Protection Agency.
- (iv) The initials FIP mean or refer to Federal Implementation Plan.
- (v) The initials MDEQ mean or refer to the Montana Department of Environmental Quality.
- (vi) The initials NO_x mean or refer to nitrogen oxides.
- (vii) The initials NSR mean or refer to New Source Review.
- (viii) The initials PM_{2.5} mean or refer to particulate matter equal to or less than 2.5 microns in diameter.
- (ix) The initials PSD mean or refer to Prevention of Significant Deterioration.
- (x) The initials SIP mean or refer to State Implementation Plan.
- (xi) The words State or Montana mean the State of Montana, unless the context indicates otherwise.

I. Background

EPA is taking final action to approve (with one exception) the revisions to Title 17, Chapter 8, subchapter 8 of the Administrative Rules of Montana (ARM) submitted by the State on June 4, 2013, that relate to the State's PSD program. The revisions to the State PSD SIP were adopted by the Montana Department of Environmental Quality (MDEQ) on September 27, 2012, and became effective October 12, 2012.

Montana's revisions addressed certain requirements in EPA's November 29, 2005 "Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standards – Phase 2," 70 FR 71612 ("Phase 2 Ozone Implementation Rule"). EPA's November 29, 2005 rule required states

to revise their programs for major source permitting to address ozone formation by properly regulating precursor pollutants. “Precursor pollutants” are pollutants that combine to form another pollutant; in particular, nitrogen oxides (NO_x) react with volatile organic compounds to form ozone. In the Phase 2 Ozone Implementation Rule, EPA identified NO_x as an ozone precursor pollutant in attainment and unclassifiable areas. Accordingly, the Phase 2 Ozone Implementation Rule amended the definitions in 40 CFR 51.166 of “major stationary source,” “major modification,” “significant,” and “regulated NSR pollutant” to include NO_x as an ozone precursor; the rule also amended certain requirements regarding monitoring of ozone to reflect the identification of NO_x as an ozone precursor.

However, prior to Montana’s June 4, 2013 submittal, the State had not amended its PSD rules accordingly. As a result, in a July 22, 2011 final rule (Approval and Disapproval and Promulgation of State Implementation Plan Revisions; Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standards; Montana), EPA partially disapproved a Montana SIP submission that (among other things) addressed PSD requirements pursuant to CAA section 110(a)(2)(C), because Montana’s PSD rules did not properly address NO_x as an ozone precursor pollutant as required by the Phase 2 Ozone Implementation Rule. 76 FR 43918; see also 76 FR 28934 (proposal). Under CAA section 110(c)(1)(B), this disapproval started a two-year Federal Implementation Plan (FIP) clock as to this deficiency, which required EPA to promulgate a FIP within two years of the disapproval unless the State submitted and we approved a plan revision correcting the deficiency. As we are now taking final action to approve Montana’s June 4, 2013, submittal, which addresses the requirements of the Phase 2 Ozone Implementation Rule, this action fixes the deficiency identified in our prior disapproval and

removes our FIP obligations.

II. What are the Changes that EPA is Taking Final Action to Approve?

With respect to Montana's June 4, 2013 submittal, EPA is taking final action to approve revisions to the Montana SIP that bring the State PSD program into conformance with the requirements of the Phase 2 Ozone Implementation Rule.

In our September 29, 2014 proposed action (79 FR 58311), we proposed to approve the following revisions to the Administrative Rules of Montana (ARM): *17.8.801(20)(a) (major modification); 17.8.801(22)(b) (major stationary source); 17.8.801(25) (nitrogen oxides or NO_x); 17.8.801(27)(a) (significant); and 17.8.818(7)(a)(6) (Review of Major Source and Major Modifications – Source Applicability and Exemptions)*. The submittal also corrected a small error in an August 15, 2012 Montana submittal regarding the treatment of fine particulate matter (PM_{2.5}). We have not acted on the remaining portions of the August 15, 2012 submittal; EPA will act on the correction in the June 4, 2013 submittal in tandem with our future action on the rest of the August 15, 2012 submittal.

We provided a detailed explanation of the basis of approval in our proposed rulemaking (see 79 FR 58311.) We invited comment on all aspects of our proposal and provided a 30-day comment period. The comment period ended on October 29, 2014.

III. Response to Comments

We received one comment during the public comment period. This one comment was in support of our proposed rule, and we acknowledge receipt of that comment.

IV. What Action is EPA Taking Today?

As discussed in our proposed rulemaking, the requirements included in Montana's PSD

program, as specified in ARM 17.8.801 and ARM 17.8.818, are substantially the same as the federal provisions for PSD as set forth at 40 CFR 51.166. Thus, for the reasons discussed in our proposal notice and summarized above, EPA is taking final action to approve the revisions to the ARM 17.8.801 and 17.8.818 as outlined in Section II of this rulemaking (with the small exception noted there) and as submitted to EPA by the State of Montana on June 4, 2013.

V. Statutory and Executive Orders Review

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact in a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after

it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See CAA section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq*

Dated: November 3, 2014.

Shaun L. McGrath
Regional Administrator
Region 8

For the reasons stated in the preamble, the Environmental Protection Agency amends 40 CFR Part 52 as follows:

PART 52 - APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart BB – Montana

2. Section 52.1370 is amended by adding paragraph (c)(74) to read as follows:

§52.1370 Identification of plan.

* * * * *

(c) * * *

(74) On June 4, 2013 the State of Montana submitted revisions to the Administrative Rules of Montana (ARM), Air Quality, Subchapter 8, Prevention of Significant Deterioration of Air Quality, 17.8.801, Definitions, and 17.8.818, Review of Major Stationary Sources and Major Modifications – Source Applicability and Exemptions.

(i) Incorporation by reference

(A) Administrative Rules of Montana, Air Quality, Subchapter 8, Prevention of Significant Deterioration of Air Quality, 17.8.801, Definitions, (20) introductory text, (20)(a); (22) introductory text, (22)(b); (25); (28) introductory text, (28)(a), except for the phrase “nitrogen oxides (NO_x)”; and, 17.8.818, Review of Major Stationary Sources and Major Modifications – Source Applicability and Exemptions, (7) introductory text, (7)(a) introductory text, (7)(a)(vi), effective 10/12/2012.

[FR Doc. 2015-01490 Filed 01/28/2015 at 8:45 am; Publication Date: 01/29/2015]